

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ANTHONY OLIVER,

Petitioner,

vs.

HOWARD SKOLNIK, et al.,

Respondents.

Case No. 2:08-CV-01391-RLH-(PAL)

ORDER

Petitioner has submitted an Application to Proceed in Forma Pauperis (#1) and a Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254. The Court finds that Petitioner is unable to pay the filing fee. The Court has reviewed the Petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. Petitioner must show cause why the Court should not dismiss this action for failure to exhaust available state-court remedies.

Petitioner was convicted of attempted murder and six counts of domestic violence battery with bodily harm. The state court adjudicated Petitioner as a habitual criminal and sentenced him to two concurrent terms of life imprisonment with the possibility of parole. Petition, p. 2. The state court entered its judgment of conviction on June 5, 2008. Id., p. 1. Petitioner appealed, and the appeal is currently pending in the Nevada Supreme Court. Id., p. 3.

Before a federal court may consider a petition for a writ of habeas corpus, the petitioner must exhaust the remedies available in state court. 28 U.S.C. § 2254(b). To exhaust a ground for relief, a petitioner must fairly present that ground to the state's highest court, describing the operative facts and legal theory, and give that court the opportunity to address and resolve the

1 ground. See Duncan v. Henry, 513 U.S. 364, 365 (1995) (per curiam); Anderson v. Harless, 459
2 U.S. 4, 6 (1982).

3 Petitioner raises one ground for relief. He claims that his sentence as a habitual
4 criminal violates the Fourteenth Amendment because the sentence exceeds the limits in the habitual
5 criminal statute, Nev. Rev. Stat. § 207.010. Petitioner's first opportunity to raise this claim with the
6 Nevada Supreme Court is his appeal from his judgment of conviction. That appeal is still pending,
7 and the ground for relief appears to be unexhausted. See Sherwood v. Tomkins, 716 F.2d 632, 634
8 (9th Cir. 1983).

9 IT IS THEREFORE ORDERED that the Application to Proceed in Forma Pauperis
10 (#1) is **GRANTED**. Petitioner need not pay the filing fee of five dollars (\$5.00).

11 IT IS FURTHER ORDERED that the Clerk of the Court shall file the Petition for a
12 Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254.

13 IT IS FURTHER ORDERED that, within thirty (30) days from the date on which this
14 Order is entered, Petitioner shall show cause why the Court should not dismiss this action for the
15 failure to exhaust available remedies in state court.

16 DATED: October 16, 2008.

17
18 
19 _____
20 ROGER L. HUNT
21 Chief United States District Judge
22
23
24
25
26
27
28